Bill of Rights

A Reprint of
the Twelve Proposed Amendments
to the Federal Constitution
as Submitted to the
States for Ratification in 1789

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A Reprint of
the Twelve Proposed Amendments
to the Federal Constitution
as Submitted to the
States for Ratification in 1789

With a Note by
WILLIAM BENNETT MUNRO
on the Framing and Adoption of
the Ten Amendments
Which Constitute the Bill of Rights

San Marino, California
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1943

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Anderson & Ritchie : The Ward Ritchie Press
Los Angeles, California

A Reprint of the Bill of Rights

AMENDMENTS

PROPOSED TO BE ADDED

TO THE

FEDERAL CONSTITUTION,

BY THE

CONGRESS

OF THE

UNITED STATES

OF

AMERICA,

Begun and held at the CITY of NEW-YORK, on WEDNESDAY, the fourth Day of MARCH, in the YEAR M.DCC.LXXXIX.

PRINTED at *BOSTON*, MASSACHUSETTS,
BY THOMAS ADAMS,
PRINTER to the HONOURABLE the GENERAL COURT.
M,DCC,XC.

UNITED STATES, OCTOBER 2d, 1789.

SIR,

IN purſuance of the incloſed Reſolution, I have the honor to tranſmit to your Excellency, a copy of the Amendments propoſed to be added to the Conſtitution of the United States.

I have the honor to be,
with due conſideration,
your Excellency's moſt
obedient Servant
G. WASHINGTON.

His Excellency JOHN HANCOCK.

CONGRESS of the UNITED STATES.
In the HOUSE *of* REPRESENTATIVES,
THURSDAY, 24th of SEPTEMBER, 1789.

RESOLVED, by the Senate and Houſe of Repreſentatives of the United States of *America* in Congreſs aſſembled, That the PRESIDENT of the United States be requeſted to tranſmit to the Executives of the ſeveral States which have ratified the Conſtitution, copies of the Amendments, propoſed by Congreſs, to be added thereto; and like copies to the Executives of the States of *Rhode-Iſland* and *North-Carolina*. Atteſt—

JOHN BECKLEY, Clerk.

UNITED STATES OF *AMERICA*.
In SENATE, SEPTEMBER, 26th, 1789.

RESOLVED, That the Senate do concur in this Reſolution. Atteſt—

SAMUEL A. OTIS, Secretary.

Congreſs of the United States,

Begun and held at the city of NEW-YORK, on Wedneſday the fourth of MARCH, one thouſand ſeven hundred and eighty-nine.

The Conventions of a number of the States having at the time of their adopting the Conſtitution, expreſſed a deſire, in order to prevent miſconſtruction or abuſe of its powers, that further declaratory and reſtrictive clauſes ſhould be added: And as extending the ground of public confidence in the government, will beſt inſure the beneficent ends of its inſtitution:

RESOLVED, by the Senate and Houſe of Repreſentatives of the United States of AMERICA, in Congreſs aſſembled, two thirds of both Houſes concurring, That the following Articles be propoſed to the Legiſlatures of the ſeveral States, as Amendments to the Conſtitution of the United States, all or any of which Articles. when ratified by three fourths of the ſaid Legiſlatures, to be valid to all intents and purpoſes, as part of the ſaid Conſtitution, viz.

Articles

ARTICLES in Addition to, and Amendment of, the CONSTITUTION of the UNITED STATES of AMERICA, propoſed by Congreſs, and ratified by the Legiſlatures of the ſeveral States, purſuant to the fifth Article of the original Conſtitution.

Article the Firſt.

AFTER the firſt enumeration required by the firſt Article of the Conſtitution, there ſhall be one Repreſentative for every thirty thouſand, until the number ſhall amount to one hundred, after which the proportion ſhall be ſo regulated by Congreſs, that there ſhall be not leſs than one hundred Repreſentatives, nor leſs than one Repreſentative for every forty thouſand perſons, until the number of Repreſentatives ſhall amount to two hundred; after which the proportion ſhall be ſo regulated by Congreſs, that there ſhall not be leſs than two hundred Repreſentatives, nor more than one Repreſentative for every fifty thouſand perſons.

Article the Second.

No law varying the compenſation for the ſervices of the Senators and Repreſentatives, ſhall take effect, until an election of Repreſentatives ſhall have intervened.

Article

Article the Third.

CONGRESS ſhall make no law reſpecting an eſtabliſhment of religion, or prohibiting the free exerciſe thereof, or abridging the freedom of ſpeech, or of the preſs; or the right of the people peaceably to aſſemble, and to petition the government for a redreſs of grievances.

Article the Fourth.

A WELL regulated militia being neceſſary to the ſecurity of a free State, the right of the people to keep and bear arms ſhall not be infringed.

Article the Fifth.

No ſoldier ſhall in time of peace be quartered in any houſe without the conſent of the owner; nor in time of war, but in a manner to be preſcribed by law.

Article the Sixth.

THE right of the people to be ſecure in their perſons, houſes, papers, and effects, againſt unreaſonable ſearches and ſeizures, ſhall not be violated; and no warrants ſhall iſſue, but upon probable cauſe, ſupported by

oath

oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Article the Seventh.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand-Jury, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case, to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Article the Eighth.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and District wherein the crime shall have been committed, which District shall have been previously ascertained by law, and to be informed of the nature and cause of the accu-

sation;

ſation ; to be confronted with the witneſſes againſt him ; to have compulſory proceſs for obtaining witneſſes in his favor, and to have the aſſiſtance of counſel for his defence.

Article the Ninth.

In ſuits at common law, where the controverſy ſhall exceed twenty dollars, the right of trial by Jury, ſhall be preſerved, and no fact, tried by a Jury, ſhall be otherwiſe re-examined in any Court of the United States, than according to the rules of the common law.

Article the Tenth.

Excessive bail ſhall not be required, nor exceſſive fines impoſed, nor cruel and unuſual impriſonments inflicted.

Article the Eleventh.

The enumeration in the Conſtitution, of certain rights, ſhall not be conſtrued to deny or diſparage others retained by the people.

Article

Article the Twelfth.

THE powers not delegated to the United States, by the Conſtitution, nor prohibited by it to the States, are reſerved to the States reſpectively, or to the people.

FREDERICK A. MUHLENBERG,
Speaker of the Houſe of Repreſentatives.

JOHN ADAMS, *Vice-Preſident of the United States, and Preſident of the Senate.*

Atteſt.
JOHN BECKLEY, *Clerk of the Houſe of Repreſentatives.*
SAMUEL A. OTIS, *Secretary of the Senate.*

A Note on the Bill of Rights

A Note on

The Framing and Adoption of the First Ten Amendments to the Constitution of the United States

By William Bennett Munro

The "Constitution for the United States of America" contained no Bill of Rights when it left the hands of its framers in 1787. It included no series of limitations upon the abuse of governmental powers such as had been placed in the constitutions of the several states—no guarantees for freedom of speech, for freedom of the press, for trial by jury, or for the other so-termed natural rights of men and citizens. A proposal to draw up a Bill of Rights and insert it in the Constitution was made while the Convention was in session, but it was voted down.

Members of the Convention had not failed to recognize the importance of those inalienable rights with which all men were deemed to be endowed, but had felt no enumeration of

them to be appropriate, since Congress was being given no authority to legislate on any matter which a Bill of Rights would control. As Alexander Hamilton lucidly expressed it: The new government is one of delegated powers. It has been given no power to invade the civil rights of the individual. Why declare that things shall not be done, which there is no power to do?

But this explanation was far from satisfying everyone when the proposed Constitution came to the states for ratification. The omission of a Bill of Rights drew sharp criticism from all quarters of the land—in fact, the document was more vigorously attacked upon this ground than upon any other. And with some reason, for here was a proposal to set up a new federal government with large powers but without those safeguards which were commonly regarded as essential to the liberties of the individual citizen. No legalistic argument could convince the people of the thirteen states that such protection might safely be omitted.

The new federal government, for example, was to set up a system of courts, with a Supreme Court and "such inferior courts as the Congress may from time to time ordain and establish." What was there to prevent the Congress from authorizing these courts to place

citizens on trial without prior indictment, without being informed of the charges against them, and without the right to have counsel in their defense?

The new federal government, likewise, was being given the right to levy taxes on imports, and to make such laws as it might deem "necessary and proper" in the exercise of this right. What assurance was there that it would not authorize all manner of unreasonable searches, seizures, and arrests in the endeavor to prevent smuggling? Without a Bill of Rights there would be nothing to hinder the new government from doing such things, and as Thomas Jefferson said "an elective despotism is not what we fought for."

By proclaiming the new Constitution to be a potential instrument of tyranny its opponents sought to arouse the fears of the people. And they were so successful that at one stage the document seemed almost certain to fail of ratification. New York was the state in which the likelihood of rejection appeared greatest, and her recalcitrancy gave the whole situation a critical turn; for even if all the other states were to ratify the Constitution no federal union could be successful without the inclusion of this powerful commonwealth which stretched athwart the country. Four states lay

to the north of her and eight to the south. No union could be solid without New York.

Fortunately, as it turned out, the supporters of the Constitution in New York were able to carry the day by the narrow margin of three votes in the ratifying convention, but only after they had softened the opposition by agreeing to a compromise. The compromise took the form of a unanimous agreement that Governor Clinton would send a circular letter to all the other states requesting their co-operation in calling a second national convention to propose a series of amendments, including a Bill of Rights. No state except Virginia took favorable action on this request; but when the new Congress assembled in 1789 its members turned their attention to the task of making good the informal assurances which had been given by the supporters of the Constitution during the ratification campaign in several of the states—namely, that, if the state conventions would ratify the new Constitution without attaching reservations, the desired amendments would be proposed by the Congress at its first session and submitted to the states for their approval.

The initiative in this direction was appropriately taken by James Madison of Virginia, who had been more influential than any other

man in the framing of the original document. From his seat in the new House of Representatives, during the early days of its initial session (June, 1789), Madison declared that he felt himself "bound in honor and in duty" to propose a series of amendments which would safeguard his fellow citizens against any possible usurpation of power on the part of the federal government. Accordingly he submitted nine proposals which, taken together, would constitute a Bill of Rights but which were to be inserted at appropriate places in the body of the original Constitution.

After some delay the House appointed a special committee to consider not only Madison's nine proposals but all the other amendments which had been suggested by the various state conventions during their debates on ratification. Four signers of the Constitution (Madison, Baldwin, Sherman, and Clymer) were members of this special committee, which was strongly Federalist in its composition. That being the case, it promptly reported favorably on Madison's propositions, virtually ignoring all the others. Then the matter was debated in Committee of the Whole and some changes were made, one of which involved a rejection of the plan to have the amendments inserted at appropriate places in the body of

the Constitution rather than as a series of numbered additions to it.

During these proceedings the proposed amendments were expanded in number by dividing some of them, so that when they left the House and went to the Senate there were seventeen separate articles dealing with the following subjects: (1) the number of seats in the House of Representatives, (2) changes in the compensation of Senators and Representatives, (3) freedom of religion and "the rights of conscience," (4) freedom of speech and the press, the right of assembly and petition, (5) the right to bear arms, but to have religious scruples against military service respected, (6) billeting of troops in times of peace, (7) guarantees against unreasonable searches and seizures, (8) safeguards against compulsory self-incrimination, second jeopardy, and other judicial abuses, together with provisions relating to due process of law and the taking of private property for public use, (9) the privilege of speedy trials, confrontation by witnesses, and counsel for defense, (10) requirements as to grand juries, trial juries, challenges, and unanimous verdicts, (11) limitations upon the taking of appeals to the Supreme Court and a provision that re-examinations there should be in accordance with the rules of common law,

(12) jury trials in civil suits, (13) bail, fines, and punishments, (14) certain prohibitions on the states, (15) rights reserved to the people, (16) separation of governmental powers, and (17) rights reserved to the states.

In the Senate these seventeen were reduced to twelve. To some extent this was accomplished by eliminating a few of the House articles in whole or in part. For example, the clause relating to conscientious objectors in Article 5 of the House proposals was stricken out. So was the entire statement (Article 16) relating to the separation of governmental powers. The Senate also abbreviated, consolidated, and rearranged some of the House proposals. When the resolution left the House, moreover, it had no preamble. The Senate added one, explaining that the submission of the proposed amendments was in accordance with the expressed desire of "the conventions of a number of states" and that "further declaratory and restricted clauses" should be added to the Constitution as a means of "extending the ground of public confidence in the government."

As the House was unwilling to accept the Senate's revision of its proposals, the whole matter went to a committee of conference, which finally reported favorably on virtually

all the Senate's changes, including the addition of a preamble. Both chambers accepted the conference committee's report during the closing days of September, 1789, and joined in passing a concurrent resolution which requested the President to submit the twelve articles of amendment to the states for ratification. This the President did in the form which is indicated by the accompanying facsimile.

In most of the state legislatures the proposed amendments were ratified with relatively little debate or discussion. Nine of the legislatures approved ten or more of the amendments before the end of June, 1790. But one more ratification was needed to make a three-fourths majority of the thirteen states, and the legislatures of Virginia, Connecticut, Massachusetts, and Georgia were for one reason or another failing to take immediate action. So the fate of the Bill of Rights hung in the balance for over a year, during which time Vermont was admitted as the fourteenth state and gave its approval (November 3, 1791) to all twelve articles. Virginia joined the procession a few weeks later (December 15, 1791).

But not all twelve of the amendments received enough ratifications to qualify. Article One, relating to the number of seats in the House of Representatives, was ratified by only

seven states, and Article Two, relating to the compensation of Senators and Representatives, by only four of them. On the other hand, Articles Three to Twelve inclusive received the requisite number of approvals and became the first ten amendments to the Constitution. They were proclaimed to be in force on March 1, 1792. Taken together these ten amendments have been commonly designated, during the past one hundred and fifty years, as the federal Bill of Rights.

Of the fourteen states which were members of the Union in 1791 only Connecticut, Georgia, and Massachusetts failed to ratify any of the amendments at the time. In these three states the legislatures considered the proposals but adjourned without taking affirmative action, and not for a hundred and forty-eight years did the question come before them again. Then, in connection with the Sesquicentennial of the Constitution, the legislatures of these three states went through the formality of making ratification unanimous by voting belated acceptance of the ten amendments which had become part of the supreme law of the land in the closing decade of the eighteenth century.

The federal Bill of Rights is properly regarded as one of the bulwarks of civil liberty

in the United States of America. It enunciates the "ten freedoms." But one ought to point out something which most of those who speak and write about it do not seem to understand—namely, that the limitations contained therein are limitations upon the federal government exclusively and do not restrict the powers of the state legislatures. This, however, is not now of much practical importance—first, because virtually all the states have inserted bills of rights in their own constitutions, and, second, because the "due process" clause of the Fourteenth Amendment (adopted in 1868) can usually be pleaded in those cases where a state is alleged to have impaired one or more of the fundamental civil liberties enumerated in the federal Bill of Rights.

The accompanying facsimile is taken from one of the earliest printings of the twelve amendments as they were submitted to the states in 1789. The original is now in the Huntington Library as a gift from The Friends.